

Chapter 4: Consultation and Coordination

4.1 National Environmental Policy Act

The National Environmental Policy Act of 1969 and its amendments (42 USC 4321 et seq.) requires federal agencies to assess the impacts that their actions may have on the environment and publicly disclose them. This EIS, prepared to meet NEPA requirements, enables BPA and cooperating agencies to fully consider and disclose the potential environmental consequences of and mitigation for the Proposed Action.

Working together, BPA with the Nez Perce Tribe, Forest Service, USFWS, CTUIR and ODFW developed a strategy to reach interested and potentially affected individuals and organizations. Their comments were used early in the process to develop key issues to guide the environmental analysis contained in this EIS.

Copies of the Draft EIS were sent to persons and organizations to review and comment on prior to final decision-making (see Appendix A). After the public comment period on the Draft EIS, responses to any comments received and any additions, clarifications or corrections to the contents of this EIS will constitute the Final EIS. After the Final EIS is prepared, the federal agencies will issue appropriate decision documents on whether to proceed with their respective actions.

4.2 Wildlife and Habitat

4.2.1 Federal Endangered Species Act

The Endangered Species Act of 1973 and amendments (ESA, 16 USC 1531 et seq.) are a mandate to conserve “the ecosystems upon which endangered and threatened species depend” and to conserve and recover listed species. The USFWS and NOAA Fisheries are responsible for administering the ESA. Before making decisions that could affect any listed threatened or endangered species, federal agencies must consult with USFWS and NOAA Fisheries to ensure that such proposed actions or decisions do not jeopardize the continued existence or adversely impact the habitat of any such species.

The USFWS and NOAA Fisheries were contacted for lists of threatened and endangered species that may be affected at the project sites. Potentially affected species are discussed in EIS Sections 3.2, 3.3 and 3.4. A biological assessment will be submitted to the USFWS and NOAA Fisheries for review of possible effects. BPA will formally consult with these agencies as required by the ESA. BPA will make no decisions about the Proposed Action until the consultation process is complete. All other entities involved in this project have complied with, or are in the process of complying with, the consultation and permitting required under ESA.

4.2.2 Oregon Endangered Species Rules

State of Oregon has a policy (ORS 496.012) “to prevent the serious depletion of any indigenous species.” To help carry out this policy the State adopted the Endangered Species Rules and Sensitive Species Rule. The latter rule created a “sensitive” species classification system to help prevent naturally reproducing native species from qualifying for listing as threatened or endangered under the federal ESA. Sections 3.2, 3.3 and 3.4 of this EIS address state-listed species, their habitats and protective measures for these species.

4.2.3 Fish and Wildlife Conservation

The Fish and Wildlife Coordination Act of 1934 (16 USC 661 et seq.) requires federal agencies to consult with the USFWS and state fish and wildlife agencies when “waters of any stream or other body of water are

proposed or authorized, permitted or licensed to be impounded, diverted...or otherwise controlled or modified” by permit or license. Provisions of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (6 USC 839 et seq.) are intended to protect, mitigate and enhance fish and wildlife of the Columbia River and its tributaries. Other federal acts and laws, the Fish and Wildlife Conservation Act of 1980 for example, encourage federal agencies to conserve and promote conservation of game and non-game species and their habitats.

BPA’s current project consultation and discussion with USFWS, NOAA Fisheries and ODFW include measures to preserve, protect and enhance resident endangered, threatened, sensitive and other species and habitats. Section 3.2 of this EIS describes measures to reduce and mitigate adverse impacts to threatened, endangered and other fish and wildlife resources.

4.3 Wild and Scenic Rivers

The 1968 Wild and Scenic Rivers Act (16 USC 1271 et seq.) established a policy to protect and preserve certain selected rivers of outstanding scenic, historic, archaeological, scientific, or other similar values. The Wild and Scenic Rivers Act directs federal agencies to protect the values of designated rivers from the adverse effects of “water resources projects” within the beds and banks of designated rivers to ensure that such projects do not have a “direct and adverse effect” on the values for which the river was designated.

Sections of the Grande Ronde, Lostine and Imnaha Rivers are designated Wild and Scenic. Facilities proposed on the Imnaha River are located within the bed and banks of the designated Wild and Scenic River corridor. Considerations to ensure that the proposed project does not have a “direct and adverse effect” on river values are discussed in Section 3.7 of this EIS. The Forest Service, as the administrative agency for the Wild and Scenic Rivers Act is preparing a “determination of effect,” of the Proposed Action on the Wild and Scenic Rivers.

4.4 Heritage Preservation and Native American Values

Several federal laws require that federal agencies consider potential impacts of their proposed actions on cultural and historic resources and, in some cases, protect these resources. These resources include National Landmarks, archeological sites, properties listed or eligible for listing in the National Register of Historic Places and other objects, structures, buildings, or sites that provide irreplaceable evidence of natural or human history of national, state or local significance.

The Archaeological Resources Protection Act (16 USC 470 et seq.) established requirements for the issuance of permits for any excavation or removal of archaeological resources from federal or Indian lands and applies to the Imnaha Satellite Facility. However, as discussed in Section 3.8 of this EIS, no archaeological sites have been identified at the Imnaha Satellite Facility. The Archeological and Historic Preservation Act (16 USC 469 et seq.) directs federal agencies to notify the Secretary of the Interior whenever they find that a federal project or action may cause the loss or destruction of significant scientific, prehistoric or archaeological data. The Historic Sites, Buildings and Antiquities Act (16 USC 461 et seq.) declared it a national policy to preserve historic sites and objects of national significance, and the National Historic Preservation Act (16 USC 470 et seq.) directs federal agencies to consider the effects of their actions for sites listed or eligible for listing in the National Register.

Section 106 of the National Historic Preservation Act, which applies to federally funded projects and sites, requires that an agency or official provide an opportunity for the State Historic Preservation Officer to comment on the potential effects of a project on cultural properties.

Section 3.8 of this EIS discusses the inventory of historic and cultural sites where excavation or construction is proposed.

4.5 Floodplain/Wetlands Assessment

In accordance with U.S. Department of Energy regulations on compliance with Floodplain/Wetlands environmental review requirements (10 CFR 1022.12) and Executive Orders 11988 and 11990, a floodplain/wetlands assessment of the impacts of the alternatives on floodplains and wetlands is included below. BPA published a notice of floodplain/wetland involvement for this project in the Federal Register on November 23, 2001.

4.5.1 Resource Description

The need and purpose of the project are described in Chapter 1. Each site is at least partly located within the 100-year floodplain of the adjacent river. Neither the Federal Emergency Management Agency nor the respective county governments, however, regulate floodplain development in the vicinity of the sites.

Wetlands that may be affected by the alternatives were preliminarily identified by biologists in the field. Although a formal wetland delineation would be accomplished should the project be implemented, wetland plants and hydrologic conditions were observed in several locations. Figures 3.4-1 and 3.4-2 show the estimated boundaries within which patches of wetland plants or conditions were observed.

4.5.2 Floodplain/Wetlands Effects

Floodplain impacts are discussed in Section 3.6. Based on the current level of design information, facilities would be constructed within the floodplain at the Lostine Adult Collection Facility, Lostine River Hatchery, Imnaha Final Rearing Facility and Imnaha Satellite Facility. New facilities at the Lostine Adult Collection Facility, Lostine River Hatchery and Imnaha Final Rearing Facility would cause localized restriction and concentration of flow as well as some scouring during major storm events. New bridge abutments at the Imnaha Satellite Facility and a new weir at the Imnaha Satellite Facility would improve flows slightly compared to the current situation.

Wetland impacts are discussed in Section 3.4. Based on the current level of design information, facilities constructed at the Lostine Adult Collection Facility and the Lostine River Hatchery would impact wetlands.

At the Lostine Adult Collection Facility, proposed clearing, grading and filling for the fish ladder, access driveway and parking area would cause a net loss of about 12,000 to 15,000 square feet of wetlands. Long-term, indirect impacts may also occur as a result of potential changes to the hydrologic regime of the site due to levee construction and proposed french drains. These impacts are not currently quantifiable, but would involve changes to plant composition (resulting from changes to the wetland water supply).

Wetland habitat occurs at the Lostine River Hatchery in association with meanders and side channels of the Lostine River and small ephemeral and perennial streams feeding the mainstem river. The proposed outfall and each of the production wells, especially the primary production well, would be located in generally wet plant communities resulting from their close proximity to the mainstem river. Construction activities at the outfall site and the production wells would cause a net loss of about 3,000 to 5,000 square feet of wetlands. Activities in the wetlands would be coordinated with the USACE (Section 4.7.2) and with state and county regulatory agencies (Section 4.7.1).

4.5.3 Alternatives

Under Executive Order 11988 and 11990, developments on floodplains and in wetlands are discouraged whenever there is a practical alternative. The nature and requirements of hatchery construction tends toward river locations that typically include floodplains and wetlands. The Proposed Action involves construction within floodplains. Two of the sites, the Lostine Adult Collection Facility and the Lostine River Hatchery, involve construction in wetlands. The No Action Alternative is not expected to effect floodplains or wetlands.

4.5.4 Mitigation

The Proposed Action includes a number of measures to avoid or minimize project impacts. These include measures such as best management practices to minimize erosion and sedimentation and replanting with native species. The Proposed Action includes a commitment to conduct formal wetland delineations at the Lostine Adult Collection Facility and the Lostine River Hatchery and to implement any compensatory mitigation based on the outcome of the delineations and applicable regulations.

4.6 Wallowa-Whitman National Forest Plans

The Imnaha Satellite Facility is sited on Forest Service lands within the Wallowa-Whitman National Forest, in the Hells Canyon National Recreation Area. Activities conducted at the site must be consistent with the Wallowa-Whitman Forest Plan and HCNRA Plan. Currently, the facility has a special use permit that would require reauthorization to complete the Proposed Action and a new permit for a power line along the access road. This is discussed in Section 3.10 of this EIS. The Imnaha Final Rearing Facility would be sited on privately owned lands within the National Forest boundary and within the HCNRA. It would require no special use permit, but would need to be consistent with certain aspects of the HCNRA Plan. As described in Section 3.10, the Forest Service would determine consistency of the Imnaha Final Rearing Facility with the HCNRA Plan through a NEPA decision document.

4.7 Other Consultation and Compliance Requirements

4.7.1 State, Areawide and Local Plans and Approvals

Once the NEPA process is completed, ESA consultation has been fulfilled, and the SHPO has concurred on cultural resources, permitting and other approval processes may begin. These include zoning approvals, building permits, waste water systems permits, road use permits, and others. For a complete list of permits and approvals required for each site in the proposed action, see Table 4.7-1.

The Council on Environmental Quality regulations for implementing NEPA require EISs to discuss possible conflicts and inconsistencies of a proposed action with approved state and local plans and laws. Only the Imnaha Satellite Facility is proposed on federal land where local ordinances do not apply. Since all other project elements are proposed on private land outside of incorporated communities, county plans, codes and ordinances would apply. Both the Union County and Wallowa County zoning codes would allow the construction of the proposed facilities as either permitted or conditional uses. County jurisdictions may also require approvals to work, or to place fill or structures, within floodplains. County jurisdictions may also require access permits to improve existing access roads or construct new access roads.

The proposed Lostine River Hatchery, Imnaha Final Rearing Facility, and Imnaha Satellite Facility all require water rights from the Oregon Department of Water Resources. Impacts associated with this water use are discussed in Section 3.6 of this EIS.

The ODSL requires a “removal-fill permit” or “general authorization” for all instream removal-fill activity, regardless of amount, in areas designated “essential salmonid habitat.” For other areas, permit or authorization is required for instream placement or removal of 50 cubic yards or more of material. All of the proposed instream project activities will be subject to this ODSL permit or authorization.

All buildings and structures would comply with the State of Oregon Uniform Building Code. Proposed septic systems would be permitted by the Oregon DEQ before operation.

4.7.2 Clean Water Act

The Clean Water Act (33 U.S.C. 1251 et seq.) regulates discharges into waters of the U.S. Section 401 of the Clean Water Act, the State Water Quality Certification program, requires that states certify compliance of federal permits and licenses with state water quality requirements. A federal permit to conduct an activity that results in discharges into waters of the U.S., including wetlands, is issued only after the affected state certifies that water quality standards would not be violated. The USACE administers section 404 of the Clean Water Act, which involves any discharge of dredged or fill material into waters of the U.S., including wetlands. The Proposed Action would affect about 12,000 to 15,000 square feet (about 1/3 acre) of wetlands at the Lostine Adult Collection Facility and about 3,000 to 5,000 square feet (about 1/8 acre) of wetlands at the Lostine River Hatchery. So, authorization would be sought from the USACE and the appropriate state and local government agencies in Oregon to ensure full compliance with the Clean Water Act if the Proposed Action is implemented.

4.7.3 Farmland Protection Policy Act

The Farmland Protection Act (7 USC 420 et seq.) was enacted to minimize the conversion of farmland to nonagricultural uses. The Natural Resources Conservation Service classifies certain soils in Union and Wallowa County as “prime farmland” soils and the State of Oregon also classifies certain soils as “important farmland.” No project facilities are known to be located on lands with these designations.

4.7.4 Noise Control Act

The Noise Control Act of 1972 (42 USC 490 et seq.) promotes an environment free from noise that jeopardizes health and welfare. Subsequent local, state and federal regulations and guidelines were established to protect residents and workers from excessive noise. However, no local noise standards exist for areas under consideration for Proposed Action sites. No noise in excess of state and local requirements is anticipated from this project, as discussed in EIS Section 3.13.

4.7.5 Clean Air Act

The Air Pollution Control Act of 1955 and The Clean Air Act and Amendments of 1970 (42 USC 741 et seq.) were adopted to protect and enhance the quality of the nation’s air. No Proposed Action activities or elements would violate current clean air standards, as discussed in EIS Section 3.12.

4.7.6 Resource Conservation and Recovery Act, Toxic Substances Control Act and Federal Insecticide, Fungicide and Rodenticide Act

The federal Resource Conservation and Recovery Act (42 U.S.C. 692 et seq.) regulates the disposal of hazardous wastes. The Toxic Substances Control Act (15 U.S.C. 2601) gives EPA the authority to regulate substances that present unreasonable risks to public health and the environment, such as polychlorinated

biphenyls (**PCBs**) and asbestos. The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.) gave EPA the authority to allow and prescribe conditions of use for insecticides, fungicides and rodenticides (collectively, “pesticides”) nationwide. Construction, operation and maintenance of the Proposed Action facilities, if implemented, would meet guidelines for use, handling, and disposal of hazardous substances. Necessary permits related to these laws would be secured. Health and Safety is discussed in EIS Section 3.14.

4.7.7 Environmental Justice

Executive Order 12898 directs federal agencies to consider the effects of their programs, policies and activities on minority and low-income populations. Federal agencies are required to incorporate environmental justice concerns into their NEPA processes. Environmental justice and potential effects of the Proposed Action on minority and low-income communities is discussed in EIS Section 3.11.

Table 4.7-1. Permits and Approvals Required for Site Development.

Permit or Approval	Activity	Facility				
		Lookingglass Hatchery	Lostine Adult Collection Facility	Lostine River Hatchery	Imnaha Final Rearing Facility	Imnaha Satellite Facility
U.S. Army Corps of Engineers <i>Section 404 Permit*</i>	Dredge and/or fill in waters of the U.S. Water resource projects in Wild and Scenic corridor.		✓	✓	✓	✓
U.S. Forest Service <i>Special Use Permit</i>	Modification of structures or uses on USFS lands					✓
OR Department of Environmental Quality <i>Water Quality Certification</i>	Dredge, fill in and/or land clearing and grading near surface waters		✓	✓	✓	✓
OR Department of Environmental Quality <i>NPDES Permit</i>	Discharge to surface waters (either direct discharge or construction-related stormwater)	✓	✓	✓	✓	✓
OR Department of Environmental Quality <i>Septic System Permit</i>	Approval of on-site septic systems			✓	✓	
OR Department of State Lands <i>Removal-Fill Permit or General Authorization</i>	In-water dredge and/or fill		✓	✓	✓	✓
OR Water Resources <i>Water Right</i>	Use of surface water or groundwater			✓	✓	✓
OR Building Codes Division or local jurisdiction <i>Building Permit</i>	Building or remodeling large structures	✓		✓	✓	
Wallowa or Union County <i>Land Use Permit or compliance</i>	Conditional or other land use approval/compliance with local land use plans	✓	✓	✓	✓	
Wallowa or Union County <i>Flood Plain</i>	Fill in floodplain		✓	✓	✓	
Wallowa or Union County <i>Access Permit</i>	Create or improve road access		✓	✓	✓	
Pacific Power Corporation <i>Easement</i>	Easement for power lines to site			✓	✓	✓

*Italics indicate type of permit.